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File No. O. Munis. Bom. city 144

Legal Department

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Subject:—

opinions under the

city of Bombay Municipal

Act, 1888

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File No. O. Munis. Bom. city 144

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5 Copies.

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Sub-section (8) of section 91A provides that any land, other than land specified in clause(c)of sub-section(2) and other than land leased or agreed to be leased by the said Board or by the Corporation specified in Schedule W, which shall be required by the Central or the Provincial Government for a public purpose, may at any time, after giving six months' notice to the Corporation, be resumed by that Government. Under certain conditions, therefore, Government would be justified in resuming plot 1(j)which forms part of the racecourse. To justify resumption of land by Govternment, the following 3 conditions must be fulfilled

(1) the land must be one other than land leased or agreed to be leased;

(2) the land must be required by Government for a public purpose; and

(3) six months' notice to the Corporation must be given

2 If the present lease expires on 1st June 1944 and the Corporation has not been able within a reasonable time to lease it or agree to lease it under sub-section 4(b)either for one year or thirty years, then Condition No. 1 would be satisfied that it is required for a public purpose. If these two conditions are satisfie' the Government may resume the said lands after giving six months' notice.

X Government is satisfied.

The second condition will be fulfilled only if the Provincial X

Sd./ P.N.Moos. 29/1/44.

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U.R. to G.D.,No. 781, dated the 29th January 1944.

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The Parel Tank Site was given on 99 years' lease to the Bombay Municipality for use as a recreation ground on a nominal rent of Re. 1/- per sq.yd. subject to the condition that it would be resumed by Government on giving three months' notice in case it was required by Government for any purpose. The lease was sanctioned by Government by Government Resolution, Revenue Department, No. 6560/24, dated 11th February 1929. In paragraph 3 of the Government letter No. 6560. G.24, dated 22nd December 1927, printed in the preamble to the said Government Resolution of 1929, Government gave an undertaking that if the Parel Tank Site were resumed "it would be prepared to hand over to the Municipality for the purpose of a small play-ground the triangular piece of land measuring 24,380 sq.yds.occupied by the Haffkine Institute Quarters provided that the triangular plot belonging to the City Improvement Trust is reserved by the Trust for the same purpose". Since Government has now resumed the Parel Tank Site, the Municipal Commissioner in his letter No. E.A.S.R. /5946, dated 5th January 1942, requests that Government should implement the promise made by Government by handing over to the Municipality the plot of land measuring 24,380 Sq.yds. (bounded by yellow lines on the plan) for the purpose of the play ground. Under present circumstances it is not feasible for Government to hand over the Haffkine Institute Quarters plot to the Municipality. On these facts, the question for R.L.A 's consideration is whether Government is legally liable to provide the Municipality with the Haffkine Institute Quarters Plot under the terms of the agreement.

2 A contract results from the acceptance of an offer or proposal; and such offer must be one capable of creating legal relations for which purpose it is necessary that the terms of the offer must be certain or at least be capable of being made certain. In British Monophone Ltd. v. King & c. Record Mfg. Co. 1935) 152 L.T.589 it has been held that an agreement to renew a

contract "on terms to be hereaafter agreed" would not result in a contract(see Iyer's law of Contracts, p.23). Reading Government Resolution, Revenue Department, No. 6560/24, dated 11th February 1929 as further clarified by Government Resolution, Revenue Department, No.,6560/24, dated 30th December 1931, what Government agreed to was that "if the Parel Tank Site was resumed by Government they would offer to the Municipal Corporation the area of 24,380 sq.yds. occupied by the Haffkine Institute Quarters, but the conditions of transfer of the latter site would be settled at the time of the transfer" Applying to the present case the principle stated in British Monophone Ltd. v.King & c. Record Mfg. Co. quoted above it appears clear that there is no concluded agreement which can be enforced against Government.

3 Attention is invited to the lease deed dated the 17th September 1935. Government has not bound itself therein to hand over the triangular piece of land in question. In its letter No. 6560-G/24, dated the 22nd December 1927, to the Municipal Commissioner, Government offered to the Municipality the lease of the Parel Tank Site on certain conditions. These conditions are five in number and contained in paragraph 2. The offer of the triangular piece of land is not made one of the conditions. Paragraph 3 of the letter relates to the offer. The Resolution sanctioning the lease states that the lease is granted on the conditions stated in the above letter. When the lease came to be executed the Municipality's Solicitors wished to insert the offer of the triangular piece of ground as one of the conditions of the lease. The solicitor to Government objected and the point was referred to Government. See Revenue Department Resolution No. 6560/24, dated the 30th December 1931, particularly the letter quoted in the preamble. The position is that Government has deliberately refused to include this offer as one of the conditions of the lease. In law therefore Government is not bound to make the offer of the triangular piece of land. Whether the offer should be made or not, is a question of policy Government to decide.

Sd./P.N.Moos. 18-7-44
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U.R. to R.D.,No. 63-P-Confl. dated the 19th July 1944.

SMR 12-7-56, 4 Copies.

Office of the R.L.A.

Government has formed from 1st April 1944 an organization called "Government Transport Services" for undertaking all transport work required to be done by the several Departments of the Secretariat and the Offices in Bombay under them, excluding the Police Department. There are nearly 152 vehicles under the Government Transport Services. The Director of the Service requested Government to arrange for exemption of these vehicles from Municipal and other taxes as in the case of A.R.P. Vehicles H.D.(A.R.P.) and G.D. both agreed that the vehicles of the G.T.S were exempt from the municipal wheel tax as they were the property of Government and were to be used only for Government transport work. The Municipal Commissioner who was then consulted u.o. by G.D. raised several objections to the exemption being granted saying that as the G.T.S. vehicles were to be used for Government Grain Shops thus displacing private vehicles Paying the Municipal wheel taxe and further that as the vehicles were also to be used by the officers for their private work on a surcharge of 50% over the basic rates and also by the Government Contractors on payment of schedules rates, the vehicles can be said to be used more or less for commercial purposes and thus it would be unfair to exempt these vehicles when they made full use of the municipal roads. Against these contentions, it is observed in H.D.(A.R.P.) notes at pages 30-31 ante that the Service is run for Government transport work only and not for making profit and that the rates charged are very much less than those charged by other commercial firms, the charges having been prescribed to cover the running and maintenance costs only. The Director of the G.T.S., U.S., H.D.(A.R.P.) and U.S., G.D. are all of the opinion that the vehicles of the Service are solely used for public purposes and therefore they should be exempt from the Municipal wheel tax under section 181 of the City of Bombay Municipal Act. The R.L.A. is requested

to advise.

2 It is clear that the vehicles are Government property and it appears from the notes that they are not used or intended to be used for purposes of profit. The third condition which clause(e-1) of section 181(1) of the City of Bombay Municipal Act, 1888 requires is that the vehicles should be used solely for public purposes. It may be presumed that transport for departments of Government would be a public purpose. It may also be presumed that the use of the vehicles for the Government work of officials would be a public purpose. But the hire of the vehicles to officials and contractors for private work would not be use for a public purpose. Vehicles available for such hire could not be said tobe used solely for public purposes, despite the fact that in practice they were seldom hired for private work. A possible course would be to pay the tax on a small proportion of the vehicles or on such vehicles as are reserved for private hire.

Sd./P.N.Moos. 25.8.44

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U.R. to G.D., No. 5991, dated the 26th August 1944.

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Under section 412A of the City of Bombay Municipal Act, 1888 power to grant a license to carry on within the City the trade or business of a dealer in or seller or hawker of milk vests in the Municipal Commissioner. It would therefore be competent to the Municipal Commissioner to relax condition 5 of the conditions of milk license issued under section 412A. For that purpose all that would be necessary is to amend condition 5 of the licenses already issued or to be issued in future by adding a proviso that this condition shall not apply to milk imported from Anand; but such amendment is likely to give rise to administrative difficulties.

Id./.... 24/10/44

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No. 7362, date the 25th October 1944.

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Very Urgent. No. 8490

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 4th December 1944.

From

P.N.Moos, Esquire, Bar-at-Law, I.C.S.,
Remembrancer of Legal Affairs.

To

The Commissioner of Police,
Bombay.

Re: Seizure of dogs from private premises under section 191 B(ii)of the Bombay Municipal (Amendment) Act, 1943, Bombay Act II of 1943.

Sir,

With reference to your leter No. 18546/63 Imp of 1944 dated the 14th November 1944, on the above subject, I have the honour to forward herewith my opinion in the matter.

Your obedient servant,

Id./..... 2/12/44

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Sub-section(3)of section 191B of the City of Bombay Municipal Act, 1888 provides:

"Any dog which has no number-ticket so attached or suspended-

(i) shallbe presumed to be a dog in respect of which no license has been granted, and

(ii) may be seized by the police or by any officer duly authorized by the Commissioner in this behalf and detained until the tax due if any has been paid".

Power to seize does not include power to enter premises. In the absence of any statutory provision permitting entry into or upon any building to seize, the principle stated in Semayne's case that "every man's house is his castle" applies. Under section 488 the Commissioner is empowered to enter any premises for purposes of inspection, survey or execution of necessary work. The Act contains no provision empowering the Commissioner to authorize any officer to enter premises to seize dogs under sub-section (3) of section 191B. The offence under section 191B being non-cognizable, it would not be lawful for the Police also to enter premises to seize dogs under sub-section(3)of section 191B. Consequently the entry of private premises in the present case by the Municipal Inspector with the assistance of the police to seize the dog under sub-section (3) of section 191B was not lawful. Section 191C however provides ample protection.

2 Section 29 of the Bombay City Police Act, 1902, is hedged in by certain limitations and comes into operation only when the Commissioner of Police issues a public notice for the purpose; and its scope is limited. It is not therefore correct to say that if section 191B(2)of the City of Bombay Municipal Act can be construed as empowering the seizure of dogs found in streets only, it will not add to what is already contained in section 29 of the Bombay City Police Act.

Id./..... . 2/12/44
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SER 12-7-56. 4 copies.

Office of the B.L.A.

Under section 222(1)of the City of Bombay Municipal Act, 1888 the Municipal Commissioner is empowered to carry any municipal drain through accross or under any street or land whatsoever within the city of for the purpose of outfall or distribution of sewage without the city; and according to the recent decision of the Bombay High Court in the Province of Bombay V. the Municipal Corporation of the City of Bombay(45 B.L.R. page 945)the provisions of section 222(1) and 265 of the city of Bombay Municipal Act apply to Crown lands by necessary implication. Consequently the Municipal Commissioner has power to lay watermains as well as drains in lands belonging to Government. Such power does not vest in the Municipality any title or claim to the land.

Section 8 of the Bombay City Land Revenue Act, 1876 inter alia provides:

"It shall be the duty of the Collector subject to the orders of the Provincial Government to fix and levy the assessment for land revenue.

When there is no right on the part of the superior holder in limitation of the right of the Provincial Government to assess, the assessment shall be fixed at the discretion of the Collector subject to the control of the Provincial Government".

Under section 8 the settlement of the assessment of each protion of land to the land revenue shall be made with the superior holder of the same and under section 10 the superior holder of land shall be liable for payment of assessment. "Superior holder" as defined in section 3(4)means the person having the highest title under the Provincial Government to any land in the City of Bombay. Reading these provisions together it will be clear that a person who has no title to land being not a superior holder, would not be liable to pay assessment under section 10. In the present case it is presumed that the Municipality has merely

carried the drain into through or under Government land in which case as stated above no title to the land vests in the Municipality Consequently the Municipality would not be liable to pay any assessment for the land.

It is true that the land occupied by the Municipality for the septic Tank at Banganga was assessed by Government. That case however appears to be distinguishable, for it appears that the land in that case has been occupied by the Municipality. Moreover the assessment was levied in that case before the High Court decision quoted above.

Sd./P.N.Moos 23/12/44
Remembrancer of Legal Affairs.

U.R. to Revenue Department, No.9083, dated 28th December 1944.

SMR 12-7-56
4 Copies.

Submitted.

2 Govt. of India, Department of War Transport, in its letter dated the 12th December 1944, states that although under section 61(k)of the City of Bombay Municipality Act, 1888, the Corporation is bound to make provision for the entertainment of a Fire Brigade and for the protection of life and property in the case of fire anywhere within the limits of the City of Bombay including the dock area, sec. 361 which enables the officers in charge of the Fire Brigade to enter any premises for the purpose of putting an end to a fire does not enable them to enter and put out fires on ships in the dock area. It is states that the Commission of Inquiry into the Bombay Explosions have expressed a doubt as to whether the word "premises" in section 3(xx)and section 361(b)can be interpreted to include ships in the docks. Government of India are anxious that no doubt should be allowed to remain about the limits of the responsibility of the Municipal Fire Brigade in respect of fire fighting on ships and the authority of their officers to enter such ships for the purpose of fighting fires on them. They therefore suggest that, as advised, an amendment of the Act would be necessary so as to make it clear that the word "premises" in section 361(b)includes ships within the any of the docks of the Port of Bombay. G.D. is of the view that a ship in a dock forms part and parcel of the dock and that if the officers are competent to enter the docks, they are also competent to enter a ship in the docks which is on fire. The ?.L.A. is requested to advise whether the view taken by G.D. is correct.

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Although the expression "premises" in section 3(gg) of the City of Bombay Municipal Act, 1888 includes a "dock", the latter expression as defined in a section 3(8) of the Bombay Port Trust Act, 1879 does not include a ship. Consequently the view taken by G.D. is not correct. An amendement of the City of Bombay Municipal Act would be necessary for the purpose.

Sd./ P.N.Moos 28/12/44
Remembrancer of Legal Affairs.

U.R. to G.D.,No. 389 Confl.dated the 28th December 1944.

SVR 12-7-56
4 Copies.